

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

CHARLIE J. DAVIS,

Plaintiff,

vs.

ZELMER HYDEN, et al.,

Defendant.

A02-214 CV (JKS)

**FINAL RECOMMENDATION
REGARDING
MOTION TO DISMISS**

(Docket No. 47)

The Magistrate Judge has reviewed the defendants' objections and the plaintiff's responses to his recommendation that the defendants' motion to dismiss be denied. (Docket Nos. 64 and 66). Nothing in said briefing would cause the Magistrate Judge to modify his initial recommendation. A few comments, however, are in order.

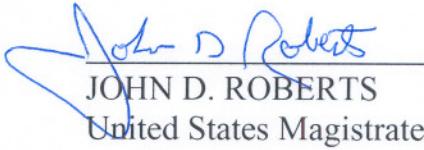
First, the court finds unpersuasive the defendants' arguments that Davis grievances were insufficient to constitute an exhaustion of remedies. This is the case even when considering – as the defendants now urge the court – the grievances in light of the summary judgment standard of Fed. R. Civ. P. 56 because matters outside the record are

being considered. It is far from a lead pipe cinch that Davis' grievances were wholly insufficient to put the defendants on notice of his medical needs. Secondly, the defendants continued reliance on *Todd v. Graves*, 217 F.Supp.2d 958, 959 (S.D. Iowa 2002) and the other cases they cite is misplaced for the reasons discussed in the initial recommendation. Finally, conspicuously absent from the defendants' objections is a grappling with the recommendation's discussion of *Estelle v. Gamble*, 429 U.S. 97, 104-105 (1976).

CONCLUSION

For the foregoing reasons the Magistrate Judge hereby declines to modify his recommendation that the defendants' motion to dismiss at docket No. 47 be **DENIED**.

DATED this 10th day of January, 2006, at Anchorage, Alaska.


JOHN D. ROBERTS
United States Magistrate Judge